

1 UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

3 EUGENE MARTIN LAVERGNE,
4 PLAINTIFF

5 Vs. CIVIL NO.
11-7117 (PGS)
6 JOHN BRYSON, et al,
DEFENDANTS
7

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12 B E F O R E: THE HONORABLE PETER G. SHERIDAN
13 U.S. DISTRICT COURT JUDGE
DISTRICT OF NEW JERSEY

15 A B B E A B A N C E S:

16 EUGENE MARTIN LAVERGNE PRO SE

17 WILLIAM FITZPATRICK, ACTING U.S. ATTORNEY
18 BY: DAVID V. BOBER, ESQUIRE
FOR THE DEFENDANTS

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20 HEARING ON PLAINTIFF'S MOTION TO VACATE PRIOR ORDER

33

23 Certified as true and correct as required
by Title 28, U.S.C. Section 753
24 /S/ Francis J. Gable
FRANCIS J. GABLE, C.C.R.
25 OFFICIAL U.S. REPORTER
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1 THE COURT: Next case is LaVergne versus Bryson.

2 Good afternoon. Can we enter appearances, please? We'll
3 start with the plaintiff.

4 MR. LaVERGNE: Good afternoon, your Honor, Eugene
00:00 5 LaVergne pro se.

6 THE COURT: Good afternoon, Mr. LaVergne.

7 MR. LaVERGNE: Good to see you, sir. Long time no
8 see.

9 MR. BOBER: Good afternoon, your Honor, David Bober
00:00 10 from the U.S. Attorney's Office for the defendant.

11 THE COURT: Good afternoon, Mr. Bober.

12 MR. BOBER: Good afternoon.

13 THE COURT: So, Mr. LaVergne, it's your motion to
14 vacate my prior order?

15 MR. LaVERGNE: Well, I don't know if it's as much a
16 motion to vacate as much as a motion to clarify and/or declare
17 null. As background, as your Honor's aware in 2011 there was
18 a lawsuit that was filed. On December 16th notwithstanding
19 the fact that the Court found that it was a challenge to the
00:01 20 apportionment of the House of Representatives, the Court
21 didn't convene a three-judge court under the statute, and
22 rather gave an opinion that isn't really a model of clarity as
23 to exactly on what basis you're proceeding but nevertheless
24 you dismissed it. Thereafter there were appeals.

25 Recently last April a new case was filed in Federal

1 District Court for the District of Columbia; different claims,
2 Administrative Procedure Act, limited strictly to the article
3 of first issue. As expected the various defendants raised as
4 a defense arguing collateral estoppel as to what you did in
00:01 5 New Jersey in 2011. Of course my response to that -- my
6 response to that is from what I can glean under the law and
7 what authority the Court had to act as a single judge district
8 court, all you could do is find that it was under the
9 established precedent of Goosner/Osby (sic), that it was either
00:02 10 wholly insubstantially or frivolous; whether or not you're
11 wrong because obviously the District of Columbia disagrees
12 with you on that issue.

13 But I don't care, I'm not seeking for you to change
14 your mind years later. I'm just seeking clarification so that
00:02 15 in this separate second case the court knows exactly what you
16 did. Because again it's my contention that with regard to the
17 authority that you have -- of course federal courts are courts
18 of limited jurisdiction, your jurisdiction is defined by
19 Article III and what Congress says you can do. This case by
00:02 20 your own admission in your decision fell within the purview of
21 the Three Judge Court Act facially as to least what I was
22 alleging.

23 Now, since that time in the *Shapiro* case the Supreme
24 Court has clarified the statute -- and mind you when I say
00:02 25 clarified, because at the time I cited in my brief the

1 majority opinion that by the way was adopted by the DC Circuit
2 Court of Appeals; and you seem to be following the minority
3 opinion that was thereafter expressly rejected by the Supreme
4 Court in *Shapiro*.

00:03 5 That being the case, the point being as a
6 single-judge district court in a case that falls within the
7 jurisdiction of a three-judge court -- the three-judge court
8 statute, the only authority you have to act as a single judge
9 district court is to dismiss for lack of subject-matter
00:03 10 jurisdiction. And actually it's less than that, because
11 there's other circumstances where there's lack of
12 subject-matter jurisdiction; say in a diversity case the
13 people live in the same state, *prima facie* you don't meet the
14 jurisdictional requirements.

00:03 15 In this case the only authority a single judge has
16 to act is if after reviewing the pleadings, the court finds
17 that they're wholly insubstantial and totally frivolous.
18 Anything after that, whether you want to talk about
19 jurisdictional arguments with abstention doctrines or other
00:04 20 types of jurisdictional arguments would require a three-judge
21 court.

22 So the threshold as defined by the Supreme Court,
23 albeit three years after your decision or four years after
24 your decision, is a hurdle that is basically almost as thick
00:04 25 as a piece of paper. It's almost -- as long as you pass the

1 snicker test, you have an argument that arguably states a
2 federal cause of action, then only three judges can decide the
3 substance. So if it is a procedural dismissal for lack of
4 subject-matter jurisdiction that involves making a substantive
00:04 5 decision beyond the facial validity of the complaint, you
6 can't do that, only three judges can do it. It's not me that
7 says, it's Congress that says it --

8 THE COURT: I thought I said that --

9 MR. LaVERGNE: -- and only Supreme Court can confirm
00:04 10 that.

11 THE COURT: I know you were saying my decision was
12 unclear, but it was affirmed if I remember it right. And, you
13 know, I dismissed it based on your lack of standing.

14 MR. LaVERGNE: That's okay, you can clarify that now
00:05 15 because you didn't say that then that's my whole point.

16 THE COURT: Oh.

17 MR. LaVERGNE: Because the point is if you dismissed
18 it for lack of standing I'm okay with that, I disagree that
19 that was a correct decision but I'm not challenging that.

00:05 20 Because the point is a dismissal for lack of jurisdiction
21 based upon lack of standing has no preclusive effect in the
22 case in Washington. So if that's why you dismissed it then
23 just clarify that and say so and we're done.

24 THE COURT: All right. Mr. Bober?

00:05 25 MR. BOBER: Thank you, your Honor. I'm not quite

1 sure where to begin --

2 THE COURT: Why do I have to do anything? There's a
3 Third Circuit opinion, it is what it is, it's the law of the
4 case.

00:05 5 MR. BOBER: I think that's exactly correct, you
6 don't have to do anything. Mr. LaVergne appealed your Honor's
7 prior decision, the Third Circuit reviewed it and affirmed it.
8 In fact if you read the Third Circuit's decision it found that
9 Mr. LaVergne failed to preserve the issue of whether a
00:06 10 three-judge panel needed to be convened, he failed to preserve
11 that on appeal.

12 But the Third Circuit was very clear that your Honor
13 correctly found that he lacked standing, correctly found that
14 this was a nonjusticiable political question; and this issue
00:06 15 about whether or not he stated a substantial claim, the Third
16 Circuit in fact found that he did not state a substantial
17 claim. I'm quoting from the Third Circuit's opinion: "This
18 appeal does not raise a substantial question. So I don't
19 think your Honor's required to do anything. Whatever --

20 THE COURT: Mr. LaVergne's not presenting any new
21 facts; right? It's the same complaint we had five years ago.

22 MR. BOBER: He lost the case before your Honor and
23 he's making the same -- I note his use of the passive voice
24 where he says a new case was brought in DC; of course he fails
00:07 25 to mention that he brought the exact same case, and he's

1 seeking to get out from under your Honor's decision. Whatever
2 effect your Honor's decision has on a DC case is an issue for
3 -- that's before the court in Washington and it's for them to
4 decide, but your Honor's not required to do anything. The
00:07 5 decision was affirmed by the Third Circuit, nothing's changed
6 and that's our position.

7 THE COURT: Thank you.

8 MR. LaVERGNE: Just to address briefly the issue of
9 the Third Circuit and to put it into context. With regard to
00:07 10 the appeal to the Third Circuit, they said that I waived that
11 issue; that's a lie. What occurred in the Third Circuit --

12 THE COURT: Well, go tell them that.

13 MR. LaVERGNE: But I'm before you asking you to
14 address what you did, not before them asking them to address
00:07 15 what they did. Because as I point out in my papers -- not to
16 you but to the District Court in Washington; the only issue
17 that they had jurisdiction -- that's the odd quirk about these
18 three judge district court cases; if it falls within the ambit
19 of a three-judge district court, the only question that the
00:07 20 Third Circuit or any other Third Circuit Court of Appeals has
21 on appeal is the threshold issue of whether or not three
22 judges should have been convened.

23 They didn't even have the authority to affirm you on
24 the subject-matter jurisdiction if it was a substantive
00:08 25 decision. And again today's the first time I've heard any

1 proof from anyone your decision was based upon standing,
2 because your opinion says standing is questionable; that's far
3 from an equivocal statement to leave the parties to understand
4 what you're deciding.

00:08 5 And having that said and having you clarify it on
6 the record today, my point is under Rule 60 as I point out,
7 you don't have single judge authority to do that. Because
8 you're telling me -- the portion of your decision dealing with
9 standing was a substantive decision, it wasn't a clearly

00:08 10 frivolous type of a finding. You didn't use the buzz words
11 that are necessary, because not all jurisdictional dismissals
12 are permitted in a single court -- a district court judge in a
13 three-judge case. The law is clear on that.

14 You can rule however you want I'll have my remedy,
00:09 15 but to lay it off on the Third Circuit -- let's put it in
16 context. I filed my case, I wasn't allowed to walk in the
17 courtroom, I wasn't allowed here, to amend my pleading, you
18 just did it. I went to the Third Circuit where oral argument
19 is presumed. In a per curiam opinion --

00:09 20 THE COURT: Well, you came in on an order to show
21 cause looking for some type of immediate relief if I recall
22 that correctly.

23 MR. LaVERGNE: Well no, I filed a complaint I also
24 filed an order to show cause; denying an order to show cause
00:09 25 does not necessitate dismissing the complaint. You did that

1 all on your own. You know, that's -- and you did that --

2 THE COURT: It was pretty obvious to me.

3 MR. LaVERGNE: It was pretty obvious to you;

4 well the -- with all due respect again, let's put this in

00:09 5 context. If it was so obvious the District Court of Columbia

6 has convened a three-judge court on the same exact same

7 allegations. So reasonable minds can disagree. My only issue

8 is I don't want your bad decision here to have preclusive

9 effect in that case down in Washington.

00:10 10 THE COURT: I think the people in Washington will be

11 more concerned about what the Third Circuit said as opposed to

12 what I said.

13 MR. LaVERGNE: No, you're missing the point. The

14 Third Circuit -- you're missing the point with all due

00:10 15 respect, Judge. In a Third Circuit -- in a three-judge court

16 case, the only appellate jurisdiction isn't to decide

17 standing, it's to decide whether a three-judge court should

18 have been convened. That's it, the law is clear on that as

19 well.

00:10 20 THE COURT: All right.

21 MR. LaVERGNE: The law is clear on that. So

22 whatever they did is a nullity, it doesn't matter. The fact

23 that they're above you doesn't sanitize what you did. I'm

24 asking you to clarify what you did. You said on the record

00:10 25 today it was for standing, so what would the harm be in

1 clarifying that decision since you would have to admit at the
2 very least your opinion does not make that clear.

3 THE COURT: Well, I don't know; I thought it made it
4 clear.

00:11 5 Mr. Bober, do you wish to respond to that?

6 MR. BOBER: I have nothing else to add unless your
7 Honor has specific questions for me.

8 THE COURT: So what do I have to do here, Mr. Bober,
9 just enter an order if I adopt the Third Circuit opinion?

00:11 10 MR. BOBER: I don't even think you have to do that
11 much. Mr. LaVergne has filed -- he's calling it something
12 different now but on the docket he called it a motion to
13 vacate under Rule 60. I think your Honor can deny the motion,
14 because he hasn't -- he hasn't established that your Honor's
00:11 15 -- I guess 60(b) (4) is that he would have to establish that
16 your Honor's prior decision was void, and for the reasons that
17 we discussed he has not done so.

18 Your Honor clearly had jurisdiction -- your Honor
19 was clearly permitted to find that a three-judge panel was not
00:11 20 -- that it was not necessary to convene a three-judge panel.

21 MR. LaVERGNE: Well, I think I'm entitled to a
22 written opinion with analysis, because quite frankly you're
23 not entitled to find that as a single judge. That's the whole
24 point of my motion that's been briefed. So if you think that
00:12 25 there's a way to get around that, tell us; tell me, tell the

1 other litigants in Washington -- you know, you don't get to
2 punt -- you don't get to make a bad decision and then just
3 punt, say well the Third Circuit said it was okay, in the
4 context of what was done with your decision, which by the way
00:12 5 talks about standing where they say it's not precedential,
6 where there's a Supreme Court opinion that says anyone has
7 standing to challenge the apportionment of the House of
8 Representatives.

9 So that's -- and I'm quite sure that's why in your
00:12 10 equivocal memorandum you didn't say well, others might have
11 better standing; you couldn't say I didn't have standing
12 because the Supreme Court disagrees with you and you're bound
13 to follow that. So, I'm entitled to an explanation and a
14 reasoning as to what you do today.

15 THE COURT: All right. Thank you for coming in, but
16 actually I didn't think my judgment last time was so ambiguous
17 that no one understood it. And I do believe I was entering a
18 judgment because I thought you lacked standing to present a
19 case on the reapportionment; and I do think that the Third
00:13 20 Circuit took a look at it and they felt that my decision was
21 fine, so they affirmed it. So I'm not exactly sure what
22 you're missing in that, Mr. LaVergne, but I will issue an
23 order on it. So give me about a week.

24 MR. LaVERGNE: Okay. Is the order going to confirm
00:13 25 that you dismissed the case in 2011 for lack of standing?

1 THE COURT: I don't know exactly what the order's
2 going to state, but it's going to go through the motion and
3 I'll decide it.

4 MR. LaVERGNE: Just so I understand what is -- the
00:13 Court's going to issue an order, or memorandum opinion and an
5 order, what's -- the you said a week.

6 THE COURT: Whatever I decide to do over the next
7 week is what you'll receive, so I haven't decided it yet. But
8 I've listened to the argument, and all I did was indicate to
00:14 you that I've reviewed the papers, I thought my original
9 decision was fine, it was affirmed by the Third Circuit;
10 you're here asking me with no new facts or anything else to
11 change what I've done five years ago. It doesn't seem to make
12 a whole lot --

13 00:14 MR. LaVERGNE: I'm not arguing new facts I'm arguing
14 you're wrong on the law --

15 17 THE COURT: Mr. LaVergne, you heard my comments, I
16 18 was trying to explain it to you, so we're down into the area
17 19 of we'd just have more argument about what we're doing. But I
00:14 20 will issue an order with some reasoning.

21 MR. LaVERGNE: I have the transcript as well.

22 THE COURT: Thank you for coming.

23 (Counsel say thank you.)

24

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I	affirm [1] - 7:23	Bober [5] - 2:9, 2:11, 5:24, 10:5, 10:8	3:11, 9:5	12:7
/S [1] - 1:24	affirmed [5] - 5:12, 6:7, 7:5, 11:21, 12:11	bound [1] - 11:12	coming [2] - 11:15, 12:22	decided [1] - 12:8
0	afternoon [6] - 2:2, 2:4, 2:6, 2:9, 2:11, 2:12	brief [1] - 3:25	comments [1] - 12:17	deciding [1] - 8:4
08608 [1] - 1:10	ago [2] - 6:21, 12:13	briefed [1] - 10:24	complaint [4] - 5:5, 6:21, 8:23, 8:25	decision [22] - 3:20, 4:23, 4:24, 5:5, 5:11, 5:19, 6:7, 6:8, 7:1, 7:2, 7:5, 7:25, 8:1, 8:8, 8:9, 9:8, 10:1, 10:16, 11:2, 11:4, 11:20, 12:11
1	al [1] - 1:6	brought [2] - 6:24, 6:25	concerned [1] - 9:11	declare [1] - 2:16
11-7117(PGS [1] - 1:5	albeit [1] - 4:23	Bryson [1] - 2:1	confirm [2] - 5:9, 11:24	defendant [1] - 2:10
16th [1] - 2:18	allegations [1] - 9:7	BRYSON [1] - 1:6	Congress [2] - 3:19, 5:7	defendants [1] - 3:3
2	alleging [1] - 3:22	buzz [1] - 8:10	contention [1] - 3:16	DEFENDANTS [2] - 1:6, 1:18
2011 [3] - 2:17, 3:5, 11:25	allowed [2] - 8:16, 8:17	BY [1] - 1:17	context [4] - 7:9, 8:16, 9:5, 11:4	defense [1] - 3:4
2018 [1] - 1:8	almost [2] - 4:24, 4:25		convene [2] - 2:21, 10:20	defined [2] - 3:18, 4:22
28 [1] - 1:23	ambiguous [1] - 11:16		convened [4] - 6:10, 7:22, 9:6, 9:18	deny [1] - 10:13
4	ambit [1] - 7:18		correct [3] - 1:23, 5:19, 6:5	denying [1] - 8:24
402 [1] - 1:9	amend [1] - 8:17		correctly [3] - 6:13, 8:22	different [2] - 3:1, 10:12
6	analysis [1] - 10:22		Counsel [1] - 12:23	disagree [2] - 5:18, 9:7
6 [1] - 1:8	appeal [4] - 6:11, 6:18, 7:10, 7:21		course [3] - 3:5, 3:17, 6:24	disagrees [2] - 3:11, 11:12
60 [2] - 8:6, 10:13	appealed [1] - 6:6		Court [15] - 2:19, 2:20, 3:1, 3:7, 3:21, 3:24, 4:2, 4:4, 4:22, 5:9, 7:16, 7:20, 9:5, 11:6, 11:12	discussed [1] - 10:17
60(b)(4) [1] - 10:15	Appeals [2] - 4:2, 7:20		COURT [25] - 1:1, 1:13, 2:1, 2:6, 2:11, 2:13, 5:8, 5:11, 5:16, 5:24, 6:2, 6:20, 7:7, 7:12, 8:20, 9:2, 9:10, 9:20, 10:3, 10:8, 11:15, 12:1, 12:7, 12:17, 12:22	dismissals [1] - 8:11
7	appeals [1] - 2:24		changed [1] - 7:5	dismissed [5] - 2:24, 5:13, 5:17, 5:22, 11:25
753 [1] - 1:23	appearances [1] - 2:2		Circuit [20] - 4:1, 6:3, 6:7, 6:12, 6:16, 7:5, 7:9, 7:10, 7:11, 7:20, 8:15, 8:18, 9:11, 9:14, 9:15, 10:9, 11:3, 11:20, 12:11	dismissing [1] - 8:25
8	appellate [1] - 9:16		Circuit's [2] - 6:8, 6:17	District [5] - 3:1, 3:11, 7:16, 9:5
856 [1] - 1:25	apportionment [2] - 2:20, 11:7		circumstances [1] - 4:11	DISTRICT [4] - 1:1, 1:1, 1:13, 1:13
889-4761 [1] - 1:25	April [1] - 2:25		cited [1] - 3:25	district [6] - 3:7, 4:6, 4:9, 7:18, 7:19, 8:12, 9:6, 9:15, 9:17
A	area [1] - 12:18		CIVIL [1] - 1:5	diversity [1] - 4:12
abstention [1] - 4:19	arguably [1] - 5:1		claim [2] - 6:15, 6:17	docket [1] - 10:12
Act [2] - 3:2, 3:21	arguing [3] - 3:4, 12:15		claims [1] - 3:1	doctrines [1] - 4:19
act [3] - 3:7, 4:8, 4:16	argument [4] - 5:1, 8:18, 12:9, 12:19		clarification [1] - 3:14	done [4] - 5:23, 10:17, 11:4, 12:13
ACTING [1] - 1:17	arguments [2] - 4:19, 4:20		clarified [2] - 3:24, 3:25	down [2] - 9:9, 12:18
action [1] - 5:2	article [1] - 3:2		clarify [5] - 2:16, 5:14, 5:23, 8:5, 9:24	due [2] - 9:4, 9:14
add [1] - 10:6	Article [1] - 3:19		clarifying [1] - 10:1	
address [3] - 7:8, 7:14	ATTORNEY [1] - 1:17		clarity [1] - 2:22	
Administrative [1] - 3:2	Attorney's [1] - 2:10		CLARKSON [1] - 1:9	
admission [1] - 3:20	authority [6] - 3:7, 3:17, 4:8, 4:15, 7:23, 8:7		clear [6] - 6:12, 8:13, 9:18, 9:21, 10:2, 10:4	
admit [1] - 10:1	aware [1] - 2:17		clearly [3] - 8:9, 10:18, 10:19	
adopt [1] - 10:9			collateral [1] - 3:4	
adopted [1] - 4:1			Columbia [3] - 3:1,	
	B			
	background [1] - 2:17			
	bad [2] - 9:8, 11:2			
	based [3] - 5:13, 5:21, 8:1			
	basis [1] - 2:23			
	begin [1] - 6:1			
	better [1] - 11:11			
	beyond [1] - 5:5			
	BOBER [8] - 1:17, 2:9, 2:12, 5:25, 6:5, 6:22, 10:6, 10:10			
	DAVID [1] - 1:17			
	David [1] - 2:9			
	DC [3] - 4:1, 6:24, 7:2			
	dealing [1] - 8:8			
	December [1] - 2:18			
	decide [6] - 5:2, 7:4, 9:16, 9:17, 12:3			
	E			
	EAST [1] - 1:9			
	effect [3] - 5:21, 7:2, 9:9			
	either [1] - 3:9			
	enter [2] - 2:2, 10:9			
	entering [1] - 11:17			
	entitled [3] - 10:21, 10:23, 11:13			

equivocal [2] - 8:3,
11:10

ESQUIRE [1] - 1:17

establish [1] - 10:15
established [2] - 3:9,
10:14

estoppel [1] - 3:4

et [1] - 1:6

Eugene [1] - 2:4

EUGENE [2] - 1:3,
1:16

exact [2] - 6:25, 9:6

exactly [5] - 2:23,
3:15, 6:5, 11:21,
12:1

expected [1] - 3:3

explain [1] - 12:18

explanation [1] -
11:13

expressly [1] - 4:3

F

facial [1] - 5:5
facially [1] - 3:21

facie [1] - 4:13

fact [4] - 2:19, 6:8,
6:16, 9:22

facts [3] - 6:21, 12:12,
12:15

failed [2] - 6:9, 6:10

fails [1] - 6:24

falls [2] - 4:6, 7:18

far [1] - 8:2

Federal [1] - 2:25

federal [2] - 3:17, 5:2

fell [1] - 3:20

felt [1] - 11:20

filed [6] - 2:18, 2:25,
8:16, 8:23, 8:24,
10:11

fine [2] - 11:21, 12:11

first [2] - 3:3, 7:25

FISHER [1] - 1:9

FITZPATRICK [1] -
1:17

five [2] - 6:21, 12:13

follow [1] - 11:13

following [1] - 4:2

FOR [1] - 1:18

four [1] - 4:23

Francis [1] - 1:24

FRANCIS [1] - 1:24

frankly [1] - 10:22

frivolous [3] - 3:10,
4:17, 8:10

G

Gable [1] - 1:24

GABLE [1] - 1:24

glean [1] - 3:6

Gooser/Osby [1] - 3:9

guess [1] - 10:15

H

harm [1] - 9:25

heard [2] - 7:25, 12:17

HEARING [1] - 1:20

Honor [9] - 2:4, 2:9,
5:25, 6:12, 6:22,
10:7, 10:13, 10:18

Honor's [8] - 2:17, 6:6,
6:19, 7:1, 7:2, 7:4,
10:14, 10:16

HONORABLE [1] -
1:12

House [2] - 2:20, 11:7

hurdle [1] - 4:24

I

III [1] - 3:19

immediate [1] - 8:21

indicate [1] - 12:9

insubstantial [1] -
4:17

insubstantially [1] -
3:10

involves [1] - 5:4

issue [13] - 3:3, 3:12,
6:9, 6:14, 7:2, 7:8,
7:11, 7:16, 7:21, 9:7,
11:22, 12:5, 12:20

J

JERSEY [3] - 1:1,
1:10, 1:13

Jersey [1] - 3:5

JOHN [1] - 1:6

Judge [2] - 3:21, 9:15

JUDGE [1] - 1:13

judge [20] - 2:21, 3:7,
4:6, 4:7, 4:8, 4:15,
4:20, 6:10, 7:18,
7:19, 8:7, 8:12, 8:13,
9:6, 9:15, 9:17,
10:19, 10:20, 10:23

judges [3] - 5:2, 5:6,
7:22

judgment [2] - 11:16,
11:18

jurisdiction [11] -

3:18, 4:7, 4:10, 4:12,
5:4, 5:20, 7:17, 7:24,
9:16, 10:18

jurisdictional [4] -

4:14, 4:19, 4:20,
8:11

K

knows [1] - 3:15

L

lack [8] - 4:9, 4:11,
5:3, 5:13, 5:18, 5:20,
5:21, 11:25

lacked [2] - 6:13,
11:18

last [2] - 2:25, 11:16

LaVergne [26] - 2:1,
2:4, 2:5, 2:6, 2:7,
2:13, 2:15, 5:9, 5:14,
5:17, 6:6, 6:9, 7:8,
7:13, 8:23, 9:3, 9:13,
9:21, 10:11, 10:21,
11:22, 11:24, 12:4,
12:15, 12:17, 12:21

LAVERGNE [2] - 1:3,
1:16

LaVergne's [1] - 6:20

law [6] - 3:6, 6:3, 8:13,
9:18, 9:21, 12:16

lawsuit [1] - 2:18

lay [1] - 8:15

least [2] - 3:21, 10:2

leave [1] - 8:3

less [1] - 4:10

lie [1] - 7:11

limited [2] - 3:2, 3:18

listened [1] - 12:9

litigants [1] - 11:1

live [1] - 4:13

look [1] - 11:20

looking [1] - 8:21

lost [1] - 6:22

M

majority [1] - 4:1

MARCH [1] - 1:8

MARTIN [2] - 1:3, 1:16

matter [5] - 4:9, 4:12,
5:4, 7:24, 9:22

meet [1] - 4:13

memorandum [2] -

11:10, 12:5

mention [1] - 6:25

might [1] - 11:10

mind [2] - 3:14, 3:24

minds [1] - 9:7

minority [1] - 4:2

missing [3] - 9:13,
9:14, 11:22

model [1] - 2:22

MOTION [1] - 1:20

motion [7] - 2:13,
2:16, 10:12, 10:13,

10:24, 12:2

8:24, 10:9, 11:23,
11:24, 12:5, 12:6,
12:20

order's [1] - 12:1

original [1] - 12:10

own [2] - 3:20, 9:1

P

panel [3] - 6:10, 10:19,
10:20

paper [1] - 4:25

papers [2] - 7:15,
12:10

parties [1] - 8:3

pass [1] - 4:25

passive [1] - 6:23

people [2] - 4:13, 9:10

per [1] - 8:19

permitted [2] - 8:12,
10:19

PETER [1] - 1:12

piece [1] - 4:25

plaintiff [1] - 2:3

PLAINTIFF [1] - 1:4

PLAINTIFF'S [1] -
1:20

pleading [1] - 8:17

pleadings [1] - 4:16

point [10] - 4:5, 5:15,
5:17, 5:20, 7:15, 8:6,
9:13, 9:14, 10:24

political [1] - 6:14

portion [1] - 8:8

position [1] - 7:6

precedent [1] - 3:9

precedential [1] - 11:5

preclusive [2] - 5:21,
9:8

present [1] - 11:18

presenting [1] - 6:20

preserve [2] - 6:9,
6:10

presumed [1] - 8:19

pretty [2] - 9:2, 9:3

prima [1] - 4:13

PRIOR [1] - 1:20

pro [1] - 2:5

PRO [1] - 1:16

procedural [1] - 5:3

Procedure [1] - 3:2

proceeding [1] - 2:23

proof [1] - 8:1

punt [2] - 11:2, 11:3

purview [1] - 3:20

put [3] - 7:9, 8:15, 9:4

Q

questionable [1] - 8:2
questions [1] - 10:7
quirk [1] - 7:17
quite [3] - 5:25, 10:22, 11:9
quoting [1] - 6:17

R

raise [1] - 6:18
raised [1] - 3:3
rather [1] - 2:22
read [1] - 6:8
really [1] - 2:22
reapportionment [1] - 11:19
reasonable [1] - 9:7
reasoning [2] - 11:14, 12:20
reasons [1] - 10:16
receive [1] - 12:8
Recently [1] - 2:25
record [2] - 8:6, 9:24
regard [2] - 3:16, 7:9
rejected [1] - 4:3
relief [1] - 8:21
remedy [1] - 8:14
remember [1] - 5:12
REPORTER [1] - 1:25
Representatives [2] - 2:20, 11:8
require [1] - 4:20
required [3] - 1:23, 6:19, 7:4
requirements [1] - 4:14
respect [2] - 9:4, 9:15
respond [1] - 10:5
response [2] - 3:5, 3:6
reviewed [2] - 6:7, 12:10
reviewing [1] - 4:16
Rule [2] - 8:6, 10:13
rule [1] - 8:14

S

sanitize [1] - 9:23
se [1] - 2:5
SE [1] - 1:16
second [1] - 3:15
Section [1] - 1:23
see [2] - 2:7, 2:8
seeking [3] - 3:13, 3:14, 7:1

seem [2] - 4:2, 12:13
separate [1] - 3:15
Shapiro [2] - 3:23, 4:4
SHERIDAN [1] - 1:12
show [3] - 8:20, 8:24
sic [1] - 3:9
single [7] - 3:7, 4:6, 4:8, 4:15, 8:7, 8:12, 10:23
single-judge [1] - 4:6
snicker [1] - 5:1
specific [1] - 10:7
standing [15] - 5:13, 5:18, 5:21, 6:13, 8:1, 8:2, 8:9, 9:17, 9:25, 11:5, 11:7, 11:11, 11:18, 11:25
start [1] - 2:3
STATE [1] - 1:9
state [3] - 4:13, 6:16, 12:2
statement [1] - 8:3
states [1] - 5:1
STATES [1] - 1:1
statute [3] - 2:21, 3:24, 4:8
STREET [1] - 1:9
strictly [1] - 3:2
subject [4] - 4:9, 4:12, 5:4, 7:24
subject-matter [4] - 4:9, 4:12, 5:4, 7:24
substance [1] - 5:3
substantial [3] - 6:15, 6:16, 6:18
substantive [3] - 5:4, 7:24, 8:9
Supreme [6] - 3:23, 4:3, 4:22, 5:9, 11:6, 11:12

T

talks [1] - 11:5
test [1] - 5:1
Thereafter [1] - 2:24
thereafter [1] - 4:3
thick [1] - 4:24
Third [21] - 6:3, 6:7, 6:8, 6:12, 6:15, 6:17, 7:5, 7:9, 7:10, 7:11, 7:20, 8:15, 8:18, 9:11, 9:14, 9:15, 10:9, 11:3, 11:19, 12:11
three [17] - 2:21, 4:7, 4:20, 4:23, 5:2, 5:6, 6:10, 7:18, 7:19, 7:21, 8:13, 9:6, 9:15,

9:17, 10:19, 10:20
Three [1] - 3:21
three-judge [12] - 2:21, 4:7, 4:20, 6:10, 7:19, 8:13, 9:6, 9:15, 9:17, 10:19, 10:20

threshold [2] - 4:22, 7:21

Title [1] - 1:23

TO [1] - 1:20

today [3] - 8:6, 9:25, 11:14

today's [1] - 7:25

took [1] - 11:20

totally [1] - 4:17

transcript [1] - 12:21

TRENTON [1] - 1:10

true [1] - 1:23

trying [1] - 12:18

type [2] - 8:10, 8:21

types [1] - 4:20

U

U.S [4] - 1:13, 1:17, 1:25, 2:10

U.S.C [1] - 1:23

unclear [1] - 5:12

under [6] - 2:21, 3:6, 3:8, 7:1, 8:6, 10:13

understood [1] - 11:17

UNITED [1] - 1:1

unless [1] - 10:6

V

vacate [3] - 2:14, 2:16, 10:13

VACATE [1] - 1:20

validity [1] - 5:5

various [1] - 3:3

versus [1] - 2:1

voice [1] - 6:23

void [1] - 10:16

Vs [1] - 1:5

W

waived [1] - 7:10

walk [1] - 8:16

Washington [6] -

5:22, 7:3, 7:16, 9:9, 9:10, 11:1

week [3] - 11:23, 12:6, 12:8

whole [3] - 5:15,

10:23, 12:14